

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

|                           |   |                            |
|---------------------------|---|----------------------------|
| Edgar Jerome Melvin,      | ) | C/A No.: 5:19-1638-DCC-KDW |
|                           | ) |                            |
| Petitioner,               | ) |                            |
|                           | ) |                            |
| v.                        | ) | REPORT AND RECOMMENDATION  |
|                           | ) |                            |
| United States of America, | ) |                            |
|                           | ) |                            |
| Respondent.               | ) |                            |
| _____                     | ) |                            |

Edgar Jerome Melvin (“Petitioner”), proceeding pro se, is an inmate incarcerated at the Federal Correctional Institution in Jessup, Georgia. He filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241<sup>1</sup> alleging he is serving an unconstitutional sentence in light of the First Step Act. Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.), the undersigned is authorized to review such petitions for relief and submit findings and recommendations to the district judge. For the reasons that follow, the undersigned recommends that the district judge transfer the petition to the Southern District of Georgia.

## II. Discussion

### A. Standard of Review

Under established local procedure in this judicial district, a careful review has been made of this petition pursuant to the Rules Governing Section 2254 Proceedings for the United States District Court,<sup>2</sup> the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L.

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<sup>1</sup> Originally docketed in Petitioner’s criminal case as a pro se Motion to Reduce Sentence, Senior United States Judge Cameron M. Currie determined Petitioner’s filing should be docketed as a petition under 28 U.S.C. § 2241. *See* ECF No. 674 in *United States v. Melvin*, 3:10-cr-580-CMC (D.S.C.).

<sup>2</sup> The Rules Governing Section 2254 are applicable to habeas actions brought under § 2241. *See* Rule 1(b).

No. 104-132, 110 Stat. 1214, and other habeas corpus statutes. Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). In evaluating a pro se complaint, the plaintiff's allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. Nevertheless, the requirement of liberal construction does not mean the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990).

#### B. Analysis

District courts are authorized to grant writs of habeas corpus “within their respective jurisdictions,” 28 U.S.C. § 2241(a), and such writs “shall be directed to the person having custody of the person detained.” 28 U.S.C. § 2243. Therefore, the proper party respondent is generally the “person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge.” *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004) (citation omitted). Similarly, because “the court issuing the writ [must] have jurisdiction over the custodian,” generally in “habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement.” *Id.* at 442–43 (citation omitted). Because Petitioner is incarcerated at the Federal Correctional Institution in Jessup, Georgia, this court lacks personal jurisdiction over his custodian. Accordingly, the undersigned recommends the court transfer Petitioner's § 2241 habeas petition to the Southern District of Georgia for further

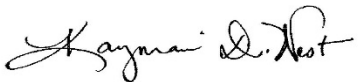
processing. *See* 28 U.S.C. § 1631 (noting a district court should transfer a habeas petition to the proper district court, if such transfer would further the interest of justice).

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends that this case be transferred to the United States District Court for the Southern District of Georgia for consideration, including further initial review.

IT IS SO RECOMMENDED.

June 11, 2019  
Florence, South Carolina

  
Kaymani D. West  
United States Magistrate Judge

**The parties are directed to note the important information in the attached  
“Notice of Right to File Objections to Report and Recommendation.”**

### **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. [I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

**Robin L. Blume, Clerk  
United States District Court  
Post Office Box 2317  
Florence, South Carolina 29503**

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).